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Federal Communications Commission
Office of Secretary

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Petition of Cavalier Telephone, LLC)	WC Docket No. 02-359
Pursuant to Section 252(e)(5) of the)	
Communications Act for Preemption)	
of the Jurisdiction of the Virginia State)	
Corporation Commission Regarding)	
Interconnection Disputes with Verizon)	
Virginia, Inc. and for Arbitration)	

**REPLY BY CAVALIER TELEPHONE, LLC
TO ANSWER OF VERIZON VIRGINIA INC.**

Petitioner, Cavalier Telephone, LLC ("Cavalier"), respectfully submits this Reply to the Answer filed by Verizon Virginia Inc. ("Verizon") on September 5, 2003. Cavalier addresses seven issues listed in Table 1 to Exhibit A to Verizon's Answer.

Issue C13

Cavalier's Position: Cavalier listed this issue as resolved in its Petition, as did Verizon in its Answer. However, the parties have not been able to agree upon the pricing. The parties are still trying to resolve this matter, and if those discussions do not ultimately succeed, then the pricing issue can be resolved under Issue C27, where it was also included in the issues list initially submitted in this proceeding. Verizon has also responded to the question in connection with Issue C27. (See Answer at pp. 58-59.) The relevant authority for this issue is Virginia law, which allows for contractual consideration through mutual promises. See, e.g., Price v. Taylor, 251 Va. 82, 466 S.E.2d 87 (Va. 1996). Although Virginia law also implies a promise to pay for goods or services, see, e.g., Kern v. Freed Co., Inc., 224 Va.

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678, 299 S.E.2d 363 (Va. 1983), Cavalier believes that it is preferable to address the question prospectively through specific contractual language and pricing.

Verizon's Position: Verizon initially agreed that this issue was resolved "by Verizon's agreement to include a provision allowing for Cavalier to charge Verizon the same amounts charged by Verizon for parallel functions." However, Verizon has since taken the position that Cavalier does not perform any parallel functions and that the price should thus be zero.

Issue V2

Cavalier's Position: Cavalier incorporates by reference its position on Issue C28. Cavalier has not yet had an adequate opportunity to analyze fully the new language proposed by Verizon on September 5, 2003, but Cavalier will continue efforts to resolve the issue with Verizon.

Verizon's Position: Verizon incorporated by reference its response to Issue C28.

Issue V24

Cavalier's Position: Although Cavalier listed this issue as unresolved in its Petition, the parties have since resolved the issue, as reflected in Verizon's Answer. However, the parties agreed to delete § 11.2.15.15 of the interconnection agreement, and it was—apparently, inadvertently—included in the proposed language submitted by Verizon. This point should be corrected in any final version of the interconnection agreement.

Verizon's Position: Cavalier believes that Verizon agrees that § 11.2 as inadvertently included in the most recent draft of the interconnection agreement.

Issue V25

Cavalier's Position: Cavalier seeks to retain the original language from § 11.2.14 of Verizon's interconnection agreement with AT&T Communications of Virginia, Inc. Verizon

proposed extensive changes to those provisions in the mark-up of the agreement that Verizon provided to Cavalier. Cavalier advised Verizon that it preferred the original language but would consider the revisions, and also requested pricing for the subloops covered by these provisions. Verizon provided two suggested pricing alternatives, and the parties continue to discuss pricing.

After release of the Triennial Review Order,¹ Verizon proposed replacing the approximately five pages of text in § 11.2.14 with a single sentence requiring that: “Verizon shall provide Cavalier with access to Inside Wire Subloops in accordance with, but only to the extent required by, Applicable Law.” (See Exhibit B to Verizon’s Answer, p. 3.) While Cavalier does not dispute that applicable provisions of the Triennial Review Order should be reflected in § 11.2.14, Cavalier believes that it is preferable to retain the more specific provisions of the AT&T interconnection agreement, to the extent that they do not conflict with the Triennial Review Order. Verizon’s proffered solution, if applied to all aspects of interconnection, would result in a reductivist agreement that simply says: “The parties agree to follow the law.” Moreover, Verizon’s recent efforts to stay the Triennial Review Order, and to seek a writ of mandamus to halt the effectiveness of the Triennial Review Order, leave in doubt the actual effect of the generic language proposed by Verizon.

If it is unstayed and goes into effect, then Cavalier agrees with Verizon that ¶¶ 343-355 of the Triennial Review Order, and new 47 C.F.R. § 51.319(b), are the principal relevant authority.

¹ Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carrier; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96-98, 98-147, FCC 03-36 (rel. August 21, 2003).

Verizon's Position: Verizon's position is set forth on page 3 of Exhibit B to Verizon's September 5, 2003 Answer.

Issue V26

Cavalier's Position: Cavalier listed this issue as unresolved in Exhibit "A" to its Petition. Although Verizon listed this issue as resolved, Cavalier does not agree to the revisions that Verizon made to § 11.2.12 of the working draft of the interconnection agreement. Some of those proposed changes relate to the still-disputed Issue C9, but any proposed changes beyond the ultimate resolution of Issue C9 should be rejected as disputed by Cavalier and waived or released by Verizon.

Verizon's Position: Verizon lists this issue as "resolved."

Issue V34

Cavalier's Position: Cavalier incorporates by reference its position on Issue C21.

Verizon's Position: Verizon incorporated by reference its response to Issue C21.

Issue V36

Cavalier's Position: Cavalier agreed to Verizon's suggestion to drop the first forecast obligation in § 10.3.3.1 of the interconnection agreement. The interconnection language submitted by Verizon already reflects the deletion of that obligation, so the issue is now resolved.

Verizon's Position and Proposed Resolution: Verizon's position and proposed resolution were set forth on page 5 of Exhibit B to Verizon's September 5, 2003 Answer.

Dated: September 11, 2003.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that true and accurate copies of the foregoing pleading were served this 11th day of September, 2003 to the following persons, by the methods indicated:

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